IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6848 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KAMLESHKUMAR V PATEL

Versus

OIL & NATURAL GAS COMMISSION

Appearance:

Shri C.K. Pandya for Shri SV RAJU for Petitioner

Ms.KJ BRAHMBHATT for Respondents.

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 01/09/2000

ORAL JUDGEMENT :

The present petition is filed by the petitioner, who was appointed as an Assistant Technician (Fitting) on 2.5.1985, who thereafter came to be appointed as Rigman (P) on 15.9.1989. Thereafter, the petitioner was given a

call letter dated 3.2.1990 asking him to appear in the interview for the post of Junior Engineer (Construction & Maintenance). It is the case of the petitioner that the petitioner appeared for the interview and by an Office Order dated 31.5.1990, the petitioner was given appointment to the post of Junior Engineer (C & M) along with five others. The petitioner joined the duties on 17.8.1990 and while he was serving as Junior Engineer, he came to be served with an Office Order dated 10.9.1990, which is produced at Annexure 'F' to the petition. In the said order, without assigning any reasons it was stated that, "the competent authority hereby withdraws the offer of appointment to the post of Junior Engineer (C&M)" and the petitioner was reverted back to the post of Rigman (P) and he was directed to report to the General Manger, Ahmedabad where he was previous working. The present petition came to be filed on 14.9.1990. On 17.9.1990 the Court issued notice returnable on 25.9.1990. Thereafter, on 25.9.1990 the Court granted ad interim relief to maintain status quo qua the petitioner upto 12.10.1990. Said ad interim relief was extended from time to time. On 15.1.1991, this Court passed an order to the effect that,

> "Rule. Miss.V.P. Shah waives service of rule for respondents. Interim relief to continue. To be placed for final hearing on April 22, 1991."

2. The matter then came to be listed for final hearing on 16th June 2000 and thereafter it is adjourned from time to time. On 11.8.2000 this Court passed an order to the effect that,

> "Mr.A.Y. Kogje, for Mr.S.V. Raju seeks time to get instructions from his client as to whether the petition survives as on date or not. S.O. to 25.8.2000."

Today, when the matter is taken up for hearing, either side does not have any fresh instructions.

3. The matter involves a short question as to whether the qualification of Diploma Course in Tools Engineering, which the petitioner is possessing can be said to be sufficient qualification as asked for by the respondent authorities for the purpose of recruitment to the post of Junior Engineers. In para 3 of the affidavit in reply filed by Shri R.P. Dubey, Deputy Director (P&A), Baroda, it is stated that for the purpose of appointment to the post of Junior Engineer (C&M) in the statutory regulations of 1980, the qualifications

prescribed for the post of Junior Engineer (C&M) are as under :

Name of the post .. Junior Engineer (C&M)

Mode of recruitment .. 100% direct recruitment.

Qualification and .. Diploma in Chemical/
experience Civil/ Electrical/
Mechanical/ Petroleum
Engineering or
equivalent.

Learned advocate for the petitioner has placed reliance on Office Memorandum dated 22.8.1975 issued by the Union Ministry of Education, Department of Education, which is produced at Annexure 'H' along with the amendment wherein it is stated that,

"In pursuance of the general principles laid down by the Board of assessment for Educational qualification, the Government of India have decided to recognise provisionally, a pass in the part time Diploma Courses in the following fields, awarded by the State Board of Technical Education, Gujarat for the purposes of recruitment to subordinate posts and services under the Central Government in the appropriate fields.

1. Part time Diploma Course in Civil Engineering.

2. Part time Diploma Course in Mechanical Engineering.

3. Part time Diploma Course in Electrical Engineering.

4. Part time Diploma Course in Machine Tools Engineering.

5. Part time Diploma Course in Tools Engineering."

4. The submission of the learned advocate is that the Diploma in Tools Engineering is recognized by the Government of India though provisionally for the purpose of recruitment to subordinate posts and services under the Central Government, in appropriate fields. The question which is required to be considered by this Court

is as to what is the exact meaning of the expression "or equivalent" as is mentioned in the qualifications and experience prescribed in the statutory regulations for the post of Junior Engineer (C&M), after mentioning the diplomas in various branches. Whether the phrase "or equivalent" would mean possessing of diploma in any branch which is equivalent to a diploma course or that the diploma possessed by a person or for that reason by the petitioner is equivalent to "Diploma in Mechanical Engineering". Learned advocate for the petitioner relied upon a letter dated 13.6.1983, produced by the respondent authorities along with their affidavit in reply at Annexure 'I'. Said letter is addressed to the Director of Personnel, Oil & Natural Gas Commission, wherein it is mentioned that,

" .. .. the part time Diploma Course in Mechanical Tools Technology & Tools Engineering is a part time course meant for ITI pass students. The structures and syllabus for the course is quite different than that of Diploma in Mechanical Engineering Course and hence it is not equivalent to DME course."

What is important to note is the sentence written in the same letter, in bold letters, which reads as under :

"HOWEVER, IT IS OF THE DIPLOMA LEVEL COURSE AT PAR WITH OTHER DIPLOMA COURSES."

The controversy then narrows down to a question that when the requirement under clause 'qualifications and experience' was Diploma in Chemical/ Civil/ Electrial/ Mechanical/ Petroleum Engineering or equivalent, whether holding of diploma in "Tools Engineering" can be said to be a sufficient qualification or not.

5. In the opinion of this Court the question is replied in no uncertain terms by the Technical Examination Board, Gujarat State. It can be appreciated that if the necessary qualification and experience for a particular post was that of holding of diploma in Mechanical Engineering only and at that time, if a person holding diploma of any other branch was required to be considered to be qualified then what is submitted by learned counsel for the respondents would have some force and would have required consideration.

6. In the present case it is to be appreciated that the post was that of Junior Engineer (C&M) and the qualification required was holding of a diploma in any of

the branch(es) mentioned therein or its equivalent. This would mean that if a candidate is possessing a qualification, which is equivalent to diploma level course, he/ she is qualified for being considered for appointment to the post of Junior Engineer (C&M). In view of the above, this petition deserves to be allowed.

7. Learned advocate for the petitioner also relied upon the certificate issued by the Principal, Govt. Polytechnic, Ahmedabad which shows that the petitioner has passed the diploma in Tools Engineering in October 1988 and that certificate further says that the diploma in Tools Engineering is a diversified course of Mechanical Engineering Branch. It is a matter of common knowledge that "diploma course" is available in many branches. In every branch, a diploma course has a separate and distinct syllabus. In light of this fact, when the qualification required is, 'a diploma in either of the mentioned branch or its equivalent, it does not mean that a candidate should have a diploma which is equivalent to a diploma in a specified branch. It is stated in so many words in the letter that the Diploma in Tools Engineering is a diploma level course.

8. It is vehemently submitted by learned counsel for the respondents that the petitioner was appointed only on probation as mentioned in the order dated 31.5.1990 and as the appointment was on probation for a period of one year from the date of taking over charge, the authorities could have passed the impugned order. So far as the probation is concerned, it does not go with the educational qualifications. It goes with the performance of the incumbent on appointment to a particular post. It is rightly mentioned that,

> " .. their continuance in the new post will depend upon the satisfactory performance of their duties. .. ".

Therefore, this submission is totally devoid of any merit. To say that during the probation period the authorities could have withdrawn their offer of appointment to the post of Junior Engineer issued to the petitioner on the ground of educational qualification, is without any substance. The same cannot be accepted and deserves to be rejected inasmuch as the impugned order is not passed on the basis of performance of the petitioner.

9. The order dated 10.9.1990 on the face of it, a non speaking order. The same is also vitiated on the ground of violation of principles of natural justice

inamsuch as the petitioner was not given an opportunity before passing of the impugned order to explain as to why the offer of appointment should not be withdrawn.

10. In the result, the present petition is allowed. The order dated 10.9.1990, Annexure 'F' to this petition is hereby quashed and set aside. Rule is made absolute. No order as to costs.

1st September 2000 (Ravi R. Tripathi, J.)

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